

Federal Communications Commission

DA 02-12802

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 02-31
Table of Allotments,)	RM-10351
FM Broadcast Stations.)	
(Memphis, Tennessee, Olive Branch)	
and Horn Lake, Mississippi))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 1, 2002

Released: May 17, 2002

By the Assistant Chief, Audio Division:

1. In response to a Petition for Rule Making filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), the Commission has before it for consideration the Notice of Proposed Rule Making, 17 FCC Rcd 2465 (2002), proposing the reallocation of Channel 239A from Olive Branch, Mississippi, to Horn Lake, Mississippi, and modification of the license for Station WOTO to specify operation on Channel 239A at Horn Lake. Clear Channel also requests changes at Memphis, Tennessee, to accommodate the allotment at Horn Lake. Clear Channel filed comments in which it reaffirmed its interest in Channel 239A at Horn Lake. No other comments were received in response to the Notice in this proceeding.

2. The proposed reallocation of Channel 239A from Olive Branch, Mississippi to Horn Lake, Mississippi, was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recond. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community").

3. As explained in the Notice, Clear Channel requested the reallocation of Channel 239A from Olive Branch, Mississippi to the community of Horn Lake, Mississippi, as a first local service under priority (3) of the allotment priorities.¹ Clear Channel acknowledged that Station WOTO is

¹ The FM Allotment priorities are: (1) First full-time aural service; (2) Second full-time service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

the only operating service in Olive Branch. In support of the removal of Station WOTO and to ensure continued service at Olive Branch, Clear Channel proposed to reallocate co-owned Station KJMS, Channel 266C1, from Memphis, Tennessee, to Olive Branch, and made a commitment to operate Station KJMS at Olive Branch. Clear Channel points out that Memphis receives local service from nine AM stations and ten FM stations. In further support of its request, Clear Channel states that its proposal will increase the total number of people served by Stations WOTO and KJMS by more than 7,400 and will eliminate an existing short spacing between Station WOTO and Station WCNA, Potts Camp, Mississippi.

4. In the Change of Community of License Order, the Commission expressed its concern with the potential migration of stations from rural areas to urban areas. The Commission relies on criteria established in Faye and Richard Tuck, 3 FCC Rcd 5347 (1988) to determine whether a community should be awarded a first local service preference.² In this instance Station WOTO, Olive Branch, already provides 70 dBu coverage to 54.8 percent of the Memphis Urbanized Area and the proposed operation at Horn Lake will encompass 68 percent of the Memphis Urbanized Area. Moreover, since Station KJMS is licensed to Memphis, serving the urbanized area, and does not intend to move its transmitter site for the reallocation to Olive Branch, coverage of the Memphis Urbanized Area will not change. Although not required, Clear Channel provided a showing that Horn Lake is an independent community from the Memphis Urbanized Area.³

5. Based upon the information presented in this proceeding, we believe the public interest would be served by granting Clear Channel's request to reallocate Station WOTO, from Olive Branch to Horn Lake, Mississippi. The change of community of license for Station WOTO will not result in the removal of sole local aural service for Olive Branch because of the reallocation of Station KJMS from Memphis, Tennessee to Olive Branch, Mississippi, in this proceeding. Clear Channel has requested the reallocation of co-owned Station KJMS from Memphis to Olive Branch, stating its willingness to file an application for Channel 266C1 at Olive Branch. Our engineering analysis indicates that Channel 266C1 can be allotted to Olive Branch at the current authorized site for Station KJMS in compliance with the Commission's spacing requirements.⁴ Our analysis also indicates that Channel 239A can be allotted to Horn Lake at Clear Channel's specified site in compliance with our Rules.⁵ To ensure that local service will continue to be provided to Olive

² (1) signal population coverage; (2) the size of the suburban community relative to the adjacent city; and (3) the interdependent of the suburban community with the central city.

³ The Tuck showing made by Clear Channel is provided in footnote number 3 of the Notice in this proceeding.

⁴ The coordinates for Channel 266C1 at Olive Branch are 35-08-01 and 90-05-38. The site is 30.8 kilometers (19.1 miles) northwest of the community.

⁵ The coordinates for Channel 239A at Horn Lake are 35-04-19 and 89-59-13. This site is 13.7 kilometers (8.5 miles) north of the community.

Branch, we will condition the grant of an authorization to operate Station WOTO on Channel 239A at Horn Lake upon activation of service for Station KJMS on Channel 266C1 at Olive Branch. See Llano and Marble Falls, TX, 12 FCC Rcd 809 (1997). The Commission has specifically stated that the public has a legitimate expectation that existing service will continue, and that this expectation is a factor to be weighed independently against the service benefits that may result from reallocating a channel. We have weighed the factors and are granting Clear Channel's reallocation request because of the public interest benefits of providing first local service to both Horn Lake and Olive Branch. However, we are compelled to condition the reallocation of Channel 239A to Horn Lake on activation of Channel 266C1 at Olive Branch to insure continued service at Olive Branch.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 1, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Horn Lake, Mississippi	239A
Memphis, Tennessee	246C1, 259C, 274C1, 283C1, 290C
Olive Branch, Mississippi	266C1

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Clear Channel Broadcasting Licenses, Inc. for Station WOTO, Channel 239A, Olive Branch, Mississippi, IS MODIFIED to specify operation on Channel 239A at Horn Lake, Mississippi, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.
- (b) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.
- (c) Operation of Station WOTO on Channel 239A in Horn Lake, Mississippi, including program test operation

pursuant to Section 73.1620, will not be commenced until a construction permit has been issued for Channel 266C1 at Olive Branch, Mississippi, and activation of service has been initiated for Station KJMS on Channel 266C1 at Olive Branch.

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Clear Channel Broadcasting Licenses, Inc. for Station KJMS, Channel 266C1, Memphis, Tennessee, IS MODIFIED to specify operation on Channel 266C1 at Olive Branch, Mississippi, subject to the following conditions:

(a) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, provided the transmission facilities comply in all respects with License BLH-19810710AA, except for the channel as specified above, and license application (Form 302) is filed within 10 days of commencement of program tests.

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, provided the transmission facilities comply in all respects with License BLH-19810710AA, except for the channel as specified above, and license application (Form 302) is filed within 10 days of commencement of program tests.

9. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Clear Channel Broadcasting Licenses, Inc., licensee of Station WOTO, is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license from Olive Branch to Horn Lake, Mississippi.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Media Bureau, (202) 418-2180. Questions relating to the application filing process should be addressed to the Audio Division, Office of Broadcast License Policy, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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